

INTERGOVERNMENTAL AGREEMENT BETWEEN COUNTY OF DUPAGE, ILLINOIS
AND THE VILLAGE OF WESTMONT FOR
DRAINAGE AND MAINTENANCE IN THE LIBERTY PARK NEIGHBORHOOD

This INTERGOVERNMENTAL AGREEMENT is made this 13th day of February 2020, between the County of DuPage, a body politic and corporate, with offices at 421 North County Farm Road, Wheaton, Illinois (hereinafter referred to as the COUNTY) and the Village of Westmont, a body politic and corporate, with offices at 31 Quincy Street, Westmont, IL 60559 (hereinafter referred to as the VILLAGE).

R E C I T A L S

WHEREAS, the Village of Westmont ("VILLAGE") and the County of DuPage ("COUNTY") are public agencies within the meaning of the Illinois "Intergovernmental Cooperation Act" and as authorized by Article 7, Section 10 of the Constitution of the State of Illinois; and

WHEREAS, the purposes of the "Intergovernmental Cooperation Act" and Article 7 of the Constitution of the State of Illinois include fostering cooperation among government bodies; and

WHEREAS, the Illinois General Assembly has granted the COUNTY authority to act to control flooding, manage stormwater runoff and improve drainage throughout the COUNTY'S territory and to enter into agreements for the aforesaid purposes (Illinois Compiled Statutes, Chapter 55 paragraphs 5/5-1062.3 and 5/5-15001 et. seq.); and

WHEREAS, the Illinois General Assembly has granted the VILLAGE authority to act to control flooding, manage stormwater runoff and improve drainage affecting the VILLAGE'S territory and to enter into agreements for the aforesaid purposes (Illinois Compiled Statutes, Chapter 65 paragraphs 5/11-110-1 and 5/11-112-6); and

WHEREAS, the Liberty Park neighborhood is located northwest of Cass Avenue and Ogden Avenue and includes areas that are within the municipal boundary of the VILLAGE and areas that are unincorporated COUNTY territory; and

WHEREAS, the Liberty Park area has experienced significant and endemic drainage and flooding problems; and

WHEREAS, pursuant to their respective authority, the COUNTY and VILLAGE have individually and jointly undertaken projects, and acquired properties, to improve flood control, stormwater management and drainage within the Liberty Park neighborhood; and

WHEREAS, the various flood control, stormwater management and drainage improvements within the Liberty Park neighborhood benefit both incorporated and unincorporated areas and, moreover, components of the parties' projects are inter-dependent; and

WHEREAS, those publicly owned facilities and properties require routine inspection, maintenance, and repairs in order to ensure that they function as intended; and

WHEREAS, the COUNTY and VILLAGE have had a series of informal and ad hoc understandings whereby the parties allocated inspection, maintenance, and repair work of the several facilities within the Liberty Park neighborhood; and

WHEREAS, the COUNTY and VILLAGE now wish to memorialize their respective rights, duties and responsibilities relative to the flood control, stormwater management and drainage improvements within the Liberty Park neighborhood through this Intergovernmental Agreement (“AGREEMENT”); and

NOW, THEREFORE, in consideration of the premises, the mutual covenants, terms, and conditions herein set forth, and the understandings of each party to the other, the parties do hereby mutually covenant, promise and agree as follows:

1.0 INCORPORATION AND CONSTRUCTION.

- 1.1 All recitals set forth above are incorporated herein and made a part thereof, the same constituting the factual basis for this AGREEMENT.
- 1.2 The headings of the paragraphs and subparagraphs of this AGREEMENT are inserted for convenience of reference only and shall not be deemed to constitute part of this AGREEMENT or to affect the construction hereof.

2.0 PURPOSE OF AGREEMENT.

- 2.1 The purpose of this AGREEMENT is to set forth the duties, roles and responsibilities to be provided by the COUNTY and the VILLAGE with respect to routine inspection, maintenance, operation, and emergency services related to the publicly owned property and infrastructure within the Liberty Park Neighborhood.

3.0 DEFINITIONS.

- 3.1 The facilities and improvements hereafter identified shall, collectively, be referred to herein as the “LIBERTY PARK FACILITIES” (or individually as a “LIBERTY PARK FACILITY”) and shall be comprised of the following:

Adams Street Pump Station – Pump station located adjacent to Adams Street, north of Parcel 09-04-204-001 in the West 39th Street right-of-way, as identified on document R1925-204461. This facility is owned by the VILLAGE.

3901 West Adams Street – Vacant lot. Parcel 09-04-204-001. This property is owned by the VILLAGE.

39th Street Pump Station – Pump station located west of intersection of Grant Street and 39th Street, within West 39th Street and Grant Street right-of-way, as identified on document R1925-204461. This facility is owned by the VILLAGE.

Adams Street Reservoir – Detention basin within West 39th Street road right-of-way, as identified on document R1925-204461, serviced by the Adams Street Pump Station and 39th Street Pump Station. This facility is owned by the VILLAGE.

Washington Street Pump Station & Reservoir – Pump station and detention basin located at 4011 Washington Street, Westmont. Parcel 09-04-210-006. This property and facility is owned by the COUNTY.

Lincoln Pump Station & Reservoir – Pump station and detention basin located on the parcels at the northeast corner of Lincoln Street and 40th Street, Westmont. Parcels 09-04-206-014 and 09-04-206-015. This property and facility is owned by the VILLAGE.

- 3.2 “Routine surface maintenance” shall mean mowing, seeding/sodding, weed eradication, tree and brush trimming/pruning/removal, litter or debris clean-up, snow removal and similar property maintenance activities.

4.0 COMMON RIGHTS AND RESPONSIBILITIES

- 4.1 Whenever a party is required by this AGREEMENT to undertake any review or issue comments, or give its consent to any matter, that party shall not unreasonably delay, deny, withhold or condition the action requested. Whenever a party is required to act, that party shall act in a reasonably timely fashion as the particular situation and circumstances warrant.
- 4.2 Each party agrees to reasonably cooperate with the other party with respect to either party’s need to obtain a regulatory permit or approval for any work (i.e., maintenance repair or modification) involving a LIBERTY PARK FACILITY.
- 4.3 Neither party may charge the other party copying fees, permit or review fees or charges, license fees, attorney or administrative expenses, mileage or telecommunication charges.

- 4.4 Each party shall bear its own expenses related to any inspection, maintenance, repair or modification to a LIBERTY PARK FACILITY it owns.
- 4.5 Each party shall be responsible for performing routine surface maintenance at each LIBERTY PARK FACILITY it owns.
- 4.6 Each party shall comply with all local, county, state and federal requirements now in force, or which may hereafter be in force, pertaining to their respective performance under this AGREEMENT.
- 4.7 Each party (as the “Indemnitor”) shall indemnify and hold harmless the other party, its officials, officers and employees (the “Indemnitee Class”) from and against all liability, claims, suits, demands, proceedings and actions, including costs, fees and expense of defense, arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property resulting from, or connected with, the Indemnitor’s negligent or willful acts, errors or omissions in its performance under this Agreement, except as hereafter provided for by Paragraph 4.8 below.
- 4.8 The parties do not waive or limit, by these indemnity requirements, any defenses or protections under the Local Government and Governmental Employees Tort Liability Act (745 ILCS 10/1 et seq.) or otherwise available to them. The immunities or defenses of either party, or any statutory limitation on damages, shall further operate as a bar and, or, limitation of that party’s indemnification obligations under this AGREEMENT. Any indemnity as provided in this AGREEMENT shall not be limited by reason of a parties’ insurance coverage and such indemnification obligations shall survive the termination, or expiration, of this AGREEMENT for a period of two (2) years.

5.0 VILLAGE RIGHTS AND RESPONSIBILITIES.

- 5.1 In a timely manner following this AGREEMENT’S effective date, the VILLAGE shall provide COUNTY with a set of copies of any plans, specifications, schematic drawings, as-built surveys and drawings, system atlases, stormwater modeling and like technical calculations pertaining to the construction, operation and function of the VILLAGE-owned LIBERTY PARK FACILITIES.
- 5.2 The VILLAGE shall allow the COUNTY and any COUNTY-hired third party consultants and contractors unlimited, but reasonable, access to the VILLAGE-owned LIBERTY PARK FACILITIES for the purpose of the COUNTY conducting any inspections, maintenance, repairs, and assisting with the operation thereof, or making agreed upon modification, as herein

described. The VILLAGE shall have unlimited, but reasonable, access to the COUNTY-owned LIBERTY PARK FACILITIES for the purpose of the VILLAGE conducting any inspections and assisting with the operation thereof.

- 5.3 As set forth in this AGREEMENT, the VILLAGE shall timely reimburse the COUNTY for the COUNTY'S expenses performing the inspections, maintenance and repairs of the VILLAGE-owned LIBERTY PARK FACILITIES, which expenses shall be invoiced at the fees and hourly rates stated in EXHIBIT A. In the event the COUNTY proposes any repair, maintenance or modification activity, or any other expense, that exceeds the \$1,500.00 per occurrence cost limit, or exceeds the annual \$5,000.00 per facility cost limit, described in Paragraph 7.5 below, the VILLAGE shall timely transmit its consent or objections to such proposal, in writing, to the COUNTY.
- 5.4 The VILLAGE shall be solely responsible for maintaining and paying for utility services provided to the VILLAGE-owned LIBERTY PARK FACILITIES, which may include but not be limited to, electrical, natural gas, and telecommunication services.
- 5.5 The VILLAGE reserves the right to conduct any inspections, maintenance, repairs, and operate the VILLAGE-owned LIBERTY PARK FACILITIES as it deems necessary or prudent. The VILLAGE reserves the further right to make modifications to the VILLAGE-owned LIBERTY PARK FACILITIES in order to improve efficiencies of the overall system. However, prior to undertaking any maintenance or repairs, or making any modifications, emergencies excepted, the VILLAGE shall provide the COUNTY with any plans, specifications, regulatory permit (including permit application submittal) and procurement documents used for such work, and afford the COUNTY reasonable time to review and comment thereon.
- 5.6 In the event the COUNTY gives the VILLAGE notice that routine surface maintenance is first necessary at a VILLAGE-owned LIBERTY PARK FACILITY in order for the COUNTY to perform under this AGREEMENT, the VILLAGE shall undertake the specific requested in a timely manner, as circumstances warrant.

6.0 COUNTY RIGHTS AND RESPONSIBILITIES.

- 6.1 The COUNTY shall inspect the COUNTY-owned and VILLAGE-owned LIBERTY PARK FACILITIES no less frequently than once per week. Each COUNTY inspection shall verify that each pump station is functioning properly, verify that all telecommunication devices are functioning properly, and visually examine the site for any evident

conditions that might adversely affect the operations or functioning of those facilities. The COUNTY shall complete an inspection checklist weekly for each LIBERTY PARK FACILITY. The COUNTY'S checklists shall be kept in an electronic format and sent electronically to WESTMONT on a weekly basis to the following email: pw@westmont.il.gov.

- 6.2 The COUNTY and any COUNTY-hired third party consultants and contractors shall have unlimited, but reasonable, access to the VILLAGE-owned LIBERTY PARK FACILITIES for the purpose of the COUNTY conducting any inspections, maintenance, repairs, and assisting with the operation thereof, or making agreed upon modification, as herein described.
- 6.3 The COUNTY shall be solely responsible for performing inspections, maintenance and repair work to the COUNTY-owned LIBERTY PARK FACILITIES, as it deems reasonable or prudent. The COUNTY reserves the right to make modifications to the COUNTY-owned LIBERTY PARK FACILITIES in order to improve efficiencies of the overall system. However, prior to undertaking any maintenance or repairs, or making any modifications, emergencies excepted, the COUNTY shall provide the VILLAGE with any plans, specifications, regulatory permit (including permit application submittal) and procurement documents used for such work, and afford the VILLAGE reasonable time to review and comment thereon.
- 6.4 The COUNTY shall be solely responsible for maintaining and paying for utility services provided to the COUNTY-owned LIBERTY PARK FACILITIES, which may include but not be limited to, electrical, natural gas, and telecommunication services.
- 6.5 The COUNTY shall be solely responsible for performing, as needed, all routine surface maintenance to the COUNTY-owned LIBERTY PARK FACILITIES.
- 6.6 The COUNTY may undertake any maintenance and repair work at the VILLAGE-owned LIBERTY PARK FACILITIES without prior notice or consent from VILLAGE provided that: i) the total cost of such maintenance and repair work does not exceed the sum of one thousand five hundred dollars and no cents (\$1,500.00), and ii) the total cost of such maintenance and repair work does not exceed the cumulative annual sum of five thousand dollars and no cents (\$5,000.00) for that particular facility.
- 6.7 The COUNTY shall be reimbursed for costs incurred, including labor, equipment and materials, at the fees and hourly rates stated on EXHIBIT A, which exhibit is attached to and incorporated into this AGREEMENT.

COUNTY shall notify VILLAGE and first receive approval in writing whenever a proposed maintenance or repair expense is estimated to be in excess of one thousand five hundred dollars (\$1,500.00), or when the proposed maintenance or repair expense would cause the annual per facility limit (\$5,000.00) to be exceeded.

- 6.8 County shall provide emergency response required for operation and, or, work (maintenance or repair) of a VILLAGE-owned LIBERTY PARK FACILITY. The COUNTY shall invoice VILLAGE for direct costs associated with such work at hourly rates as identified in Section 7.0 COMPENSATION.
- 6.9 COUNTY shall prepare and submit invoices to VILLAGE at least bi-annually during each VILLAGE fiscal year, which fiscal year runs from May 1 to the following April 30.
- 6.10 The COUNTY may elect to make modifications to any COUNTY-owned LIBERTY PARK FACILITY to improve efficiencies of the overall system. Such plans, specifications, and procurement associated with any modifications shall be the sole responsibility of the COUNTY, but the VILLAGE shall have a reasonable opportunity to review and comment prior to the COUNTY submitting same for procurement.

7.0 COMPENSATION.

- 7.1 The VILLAGE shall reimburse the COUNTY, upon submission of an invoice, for services rendered by the COUNTY for or to, any VILLAGE-owned LIBERTY PARK FACILITY identified herein. The COUNTY shall invoice the VILLAGE at least bi-annually including once within fifteen (15) days of the conclusion of the then current VILLAGE fiscal year. Upon receipt of an itemized invoice detailing all work performed, the VILLAGE shall remit payment to the COUNTY pursuant to the Local Government Prompt Payment Act. The VILLAGE'S payments shall be directed to the DuPage County Department of Stormwater Management, or its successor department.
- 7.2 For all direct expenses costing more than twenty-five dollars (\$25.00) that are not listed on EXHIBIT A, the COUNTY shall include with its invoice, documentation of such expenses including copies of receipts, if any, from third-party vendors, suppliers or service providers indicating the price(s) charged for such expensed materials and/or items.
- 7.3 COUNTY charges for COUNTY personnel and, or, COUNTY-owned equipment and machinery (collectively or individually "COUNTY asset"), shall be in accordance with the schedule of fees and hourly rates set forth in EXHIBIT A, which exhibit is attached and incorporated into this AGREEMENT. The VILLAGE agrees to compensate the COUNTY for

each COUNTY asset delivered to a designated work site. The COUNTY shall invoice time at half hour increments. The COUNTY may invoice labor rates to include reasonable travel time to and from a work site, time spent idle and, or, on a stand-by basis, (for idle and inactive time not caused by the COUNTY).

- 7.4 COUNTY may, from time-to-time but not more frequently than annually, unilaterally amend its schedule of fees and hourly rates (Exhibit A). In the event of any COUNTY amendment of Exhibit A, the revised exhibit shall not be effective until the COUNTY provides an amended exhibit to the VILLAGE. Furthermore, the COUNTY shall not invoice services at the amended fees and hourly rates for sixty (60) days following notice of such revisions.
- 7.5 The parties agree that the COUNTY shall not bill in excess of \$1,500.00 per occurrence per LIBERT PARK FACILITY, or in excess of \$5,000.00 per LIBERT PARK FACILITY annually (per VILLAGE fiscal year). In the event the COUNTY proposes to do any work (maintenance, repairs or modifications) that may cause the above dollar limits to be exceeded, the COUNTY shall first submit a proposal including a cost estimate to the VILLAGE. The VILLAGE shall timely transmit its consent or objections to such proposal, in writing, to the COUNTY. The COUNTY may only proceed with the VILLAGE'S consent, but the VILLAGE agrees to bear any reasonable cost overruns for such work not caused by the COUNTY. Furthermore, such special VILLAGE-approved expenses shall not count against the per facility dollar limits stated above.

8.0 MISCELLANEOUS TERMS.

- 8.1 The parties may modify or amend terms of this AGREEMENT only by a written document duly approved and executed by both parties, excluding term extensions as provided for in the following provision.
- 8.2 The term for this AGREEMENT shall begin on the date the AGREEMENT is fully executed by the parties and shall continue in full force and effect until April 30, 2024. Following the initial term, the AGREEMENT shall self-renew for successive one-year terms provided neither party give notice of its intent to terminate.
- 8.3 Either party may terminate this AGREEMENT by giving written notice of said termination to the other party; a termination shall be effective immediately unless specific termination date has been agreed upon, but termination shall not relieve either party of its obligations up through the date of termination, except as hereafter conditioned. In the event any work (i.e., maintenance, repairs or modifications) is ongoing at the time of

a termination, the party performing such work shall be permitted to complete any work previously authorized or, place the work site into a reasonably safe condition.

- 8.4 This AGREEMENT, including matters incorporated herein, contains the entire AGREEMENT between parties. There are no other covenants, warranties, representations, promises, conditions or understandings; either oral or written, other than those contained herein.
- 8.5 This AGREEMENT may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.
- 8.6 In event of a conflict between the terms or conditions of this AGREEMENT and any term or condition found in any exhibit or attachment, the terms and conditions of this AGREEMENT shall prevail.
- 8.7 In the event any provision of this AGREEMENT is held to be unenforceable or invalid for any reason, the enforceability thereof shall not affect the remainder of the AGREEMENT. The remainder of this AGREEMENT shall be construed as if not containing the particular provision and shall continue in full force, effect, and enforceability, in accordance with its terms.
- 8.8 The laws of the State of Illinois shall govern this AGREEMENT as to both interpretation and performance.
- 8.9 The venue for resolving any disputes concerning the parties' respective performance, or failure to perform, under this AGREEMENT, shall be the judicial circuit court for DuPage County.
- 8.10 Any required notice shall be sent to the following addresses and parties:

Village of Westmont
Public Works Department
31 W Quincy Street
Westmont, IL 60559
Attn: Director of Public Works

DuPage County Stormwater Management Department
421 North County Farm Road
Wheaton, Illinois 60187
Attn: Director of Stormwater Management

- 8.11 The parties agree that the waiver of, or failure to enforce, any breach of this AGREEMENT by the remaining party shall not be construed, or

otherwise operate, as a waiver of any future breach of this AGREEMENT. Further the failure to enforce any particular breach shall not bar or prevent the remaining party from enforcing this AGREEMENT with respect to a different breach.

IN WITNESS OF, the parties set their hands and seals as of the date first written above.

COUNTY OF DUPAGE

VILLAGE OF WESTMONT

Daniel Cronin
Chairman, DuPage County Board

[Name]
Village Manager

ATTEST:

ATTEST:

Jean Kaczmarek
County Clerk

Virginia Szymiski
Village Clerk

EXHIBIT A

Schedule of Fees for COUNTY staff and equipment

| | |
|--------------------------------|----------|
| Crew Leader | \$63/ hr |
| Senior Maintenance Worker | \$56/ hr |
| Maintenance Worker | \$49/ hr |
| Laborer | \$30/ hr |
| Stormwater Systems Coordinator | \$50/ hr |

| | |
|--------------------------------------------------------------------------|-----------|
| Equipment will be charged at a flat rate: | |
| Large Equipment | \$75 / hr |
| Small Equipment | \$50 / hr |
| Pickup trucks, small pumps, and generators are incidental to the project | |

DuPage County reserves the right to invoice for emergency callout using 1.5 multiplier for work completed outside of regular business hours (7am-3:30pm)